

UNITED STATES DISTRICT COURT

ORIGINAL

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

VERDE MEDIA CORP., F/K/A)
THE VERDE MEDIA GROUP, LLC)
A NEVADA CORPORATION,)

PLAINTIFF,)

VS.)

RON LEVI, AN INDIVIDUAL,)
ET AL.,)

DEFENDANTS.)
_____)

NO. C 14-00891 YGR

PAGES 1 - 44

OAKLAND, CALIFORNIA

TUESDAY, SEPTEMBER 23, 2014

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF:

KRONENBERGER ROSENFELD, LLP
150 POST STREET, SUITE 520
SAN FRANCISCO, CALIFORNIA 94108-4707
BY: VIRGINIA A. SANDERSON, ATTORNEY AT LAW

FOR DEFENDANTS

ROTHKEN LAW FIRM
3 HAMILTON LANDING, SUITE 280
NOVATO, CALIFORNIA 94949
BY: IRA P. ROTHKEN, ATTORNEY AT LAW

REPORTED BY:

RAYNEE H. MERCADO, CSR NO. 8258

PROCEEDINGS REPORTED BY ELECTRONIC/MECHANICAL STENOGRAPHY;
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (510) 451-7530

1 TUESDAY, SEPTEMBER 23, 2014

2:04 P.M.

2 P R O C E E D I N G S

3 **THE CLERK:** CALLING CIVIL ACTION 14-00891, VERDE
4 MEDIA VERSUS LEVI.

5 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

6 **MS. SANDERSON:** GOOD AFTERNOON, YOUR HONOR. VIRGINIA
7 SANDERSON FOR THE PLAINTIFF VERDE MEDIA.

8 **MR. ROTHKEN:** GOOD AFTERNOON, YOUR HONOR. IRA
9 ROTHKEN FOR MR. LEVI AND THE MOVANTS.

10 **THE COURT:** OKAY. GOOD AFTERNOON.

11 WELL, IF YOU HAD BEEN IN THIS COURTROOM YESTERDAY, YOU
12 WOULD HAVE SEEN BOXES EVERYWHERE. ALL OF THOSE BOOK CARTS
13 FULL OF BINDERS OF DOCUMENTS. I'VE BEEN IN THE MIDST OF A
14 MULTI-WEEK PATENT TRIAL ON THE BUS ARCHITECTURE OF COMPUTER
15 CHIPS, AND THEY SETTLED BEFORE CLOSING ARGUMENTS.

16 SO YOU ARE GOING TO HAVE THE RARE OPPORTUNITY TO ARGUE
17 YOUR MOTION IN A DIFFERENT WAY. I USUALLY COME ON TO THE
18 BENCH WITH A CLEAR PERSPECTIVE OF MY VIEWS AND A FEW
19 QUESTIONS. AND IF I DON'T HAVE QUESTIONS, THEN YOU WOULD
20 USUALLY RECEIVE A NOTICE THAT I'M TAKING IT OFF CALENDAR SO I
21 USUALLY ONLY HAVE ARGUMENT IF I HAVE QUESTIONS.

22 BUT I MOVED YOUR CASE ONCE BEFORE, AND I DID NOT WANT TO
23 MOVE IT AGAIN. SO I HAVE SPENT THE MORNING TRYING TO
24 UNDERSTAND WHAT IS GOING ON IN YOUR CASE AND WILL REALLY ALLOW
25 YOU TO -- TO WALK ME THROUGH IT IN A WAY THAT TYPICALLY

1 DOESN'T HAPPEN SO THAT WE CAN GET IT ON OUR DOCKET OF THINGS
2 THAT NEED TO BE RESOLVED.

3 I CAN TELL YOU THAT IN THE FIRST INSTANCE, IT WILL HAVE TO
4 BE REVISED IN SOME WAY, SHAPE, OR FORM. I MEAN, IT IS NOT IN
5 A FORM THAT I AM SATISFIED WITH. SEEN TOO MANY MOTIONS FOR
6 SUMMARY JUDGMENT AND TOO MANY COMPLAINTS THAT ARE NOT --
7 ARE -- DO NOT PROPERLY OR ADEQUATELY ARTICULATE THE BASIS FOR
8 WHAT THE LAWSUIT IS ABOUT.

9 AND IN THIS CASE, HAVING GONE THROUGH THE COMPLAINT, I
10 HAVE LOTS OF QUESTIONS NOT ONLY ABOUT THE FEASIBILITY OF SOME
11 OF THESE CAUSES OF ACTION, BUT IT DOES APPEAR TO ME THAT THE
12 PLAINTIFF HAS THROWN A LOT UP ON THE WALL AND HAS NOT OUTLINED
13 ITS THEORY WITH RESPECT TO ALL OF THESE INDIVIDUAL AND
14 CORPORATE DEFENDANTS. AND THAT'S NOT ACCEPTABLE.

15 SO LET'S START WITH THE RICO CLAIM. MY GENERAL SENSE OF
16 THIS COMPLAINT IS THAT SOME COMPANY -- IT'S NOT CLEAR TO ME
17 HOW BIG THIS COMPANY IS, BUT -- HAS BEEN A BROKER AND
18 ALLEGEDLY HAD SOME AGREEMENT WITH THE -- WITH AT LEAST ONE OF
19 THE DEFENDANTS TO -- TO SEND TO THE DEFENDANT OR DEFENDANTS
20 CLIENTS. AND THE DEFENDANTS ARE NOT PAYING THEM, AND THE
21 PLAINTIFF AS THE BROKER IS UPSET ABOUT THAT, THEY AREN'T
22 GETTING PAID. THAT'S THE NUCLEUS, IT SEEMS TO ME, OF THE
23 ARGUMENT.

24 SOUNDS IN CONTRACT, POTENTIALLY UNJUST ENRICHMENT, OR
25 COVENANT OF GOOD FAITH AND FAIR DEALING. THAT, I UNDERSTAND.

1 BUT TO MOVE FROM THAT TO A RICO CLAIM IS A WHOLLY DIFFERENT
2 AND DISTINCT ATTEMPT. SO IT IS UNCLEAR TO ME AS A THRESHOLD
3 MATTER HOW THIS PARTICULAR PLAINTIFF EVEN HAS STANDING TO
4 ALLEGE THE RICO CLAIMS THAT IT IS ATTEMPTING TO ALLEGE. EVEN
5 IF WHAT YOU SAY IS TRUE IN THESE COMPLAINTS AND THESE ARE VERY
6 SIGNIFICANT CHARGES BEING MADE, THAT CONDUCT ISN'T DIRECTED
7 TOWARDS THIS PLAINTIFF.

8 **MS. SANDERSON:** WE DISAGREE, YOUR HONOR. AND I CAN
9 TAKE YOU THROUGH EACH OF THE PREDICATE ACTS AND EXPLAIN HOW IT
10 HAS BEEN DIRECTED AT PLAINTIFF AND PLAINTIFF HAS BEEN DAMAGED
11 IF YOU WOULD LIKE.

12 **THE COURT:** WELL, I CAN READ THE COMPLAINT. I'D LIKE
13 YOU TO ARGUE.

14 **MS. SANDERSON:** VERY WELL.

15 **THE COURT:** SO DON'T -- DON'T READ ME THE COMPLAINT.

16 **MS. SANDERSON:** I WON'T. I PROMISE, YOUR HONOR.

17 WE HAVE ALLEGED THE PREDICATE ACTS OF WIRE FRAUD,
18 FINANCIAL INSTITUTION FRAUD, MONEY LAUNDERING, AND WITNESS
19 TAMPERING. WIRE FRAUD, THIS WAS DIRECTED TOWARDS THE
20 PLAINTIFF. MISREPRESENTATIONS INTENTIONALLY MADE TO PLAINTIFF
21 THROUGH ELECTRONIC CHANNELS, INTERSTATE CHANNELS, INTENDED TO
22 INDUCE THE PLAINTIFF TO --

23 **THE COURT:** BUT WHAT IS THE CONSPIRACY? WHAT IS --
24 WHAT IS THE ACT? WHAT IS THE FUNDAMENTAL RICO COMPLAINT?

25 **MS. SANDERSON:** THE FUNDAMENTAL -- THE BASIS OF THE

1 RICO COMPLAINT IS THE ENTERPRISE HERE. THE DEFENDANTS' USE OF
2 MULTIPLE CORPORATIONS, SOME -- IN SOME CASES IN INTERNATIONAL
3 JURISDICTIONS TO DISGUISE NOT ONLY FROM PLAINTIFF BUT FROM
4 FEDERAL AUTHORITIES WHICH THEY'VE HAD PROBLEMS WITH IN THE
5 PAST AND ALSO FROM THE CONSUMING PUBLIC THAT IT IS REALLY ONE
6 ENTITY, ONE GROUP OF PEOPLE WHO OWN ALL OF THESE VARIOUS WEB
7 PROPERTIES WHO ARE ENGAGED IN THIS VARIETY OF MISCONDUCT
8 ACROSS THE BOARD, INCLUDING CONDUCT DIRECTED AT THE PLAINTIFF.

9 **THE COURT:** WHAT SPECIFICALLY WAS DIRECTED AT THIS
10 PLAINTIFF?

11 **MS. SANDERSON:** WIRE FRAUD, MISREPRESENTATIONS MADE
12 DIRECTLY TO PLAINTIFF.

13 **THE COURT:** "MISREPRESENTATIONS," WHAT DO YOU MEAN?
14 I MEAN, WE HAVE MISREPRESENTATION CASES ALL THE TIME. THAT
15 DOESN'T GIVE YOU A RICO CAUSE OF ACTION.

16 **MS. SANDERSON:** IT DOES WHEN IT'S COMBINED WITH THE
17 ENTERPRISE, WHEN THE CONDUCT -- THE CONDUCT AT --

18 **THE COURT:** YOU'RE USING WORDS FROM THE STATUTE
19 WITHOUT EXPLAINING -- IT IS A CONCLUSORY WORD. IT IS A
20 CONCLUSORY WORD. YOU HAVE TO DESCRIBE IT.

21 **MS. SANDERSON:** OUR DESCRIPTION IS THAT EACH OF THESE
22 DEFENDANTS ARE WORKING TOGETHER. THEY'RE WORKING TOGETHER
23 WITH THE PURPOSE OF DEFRAUDING PLAINTIFF, OF DEFRAUDING THEIR
24 OTHER BUSINESS PARTNERS, OF DEFRAUDING FEDERAL AUTHORITIES --

25 **THE COURT:** OKAY. YOU DON'T REPRESENT FEDERAL

1 AUTHORITIES, CORRECT?

2 MS. SANDERSON: CORRECT.

3 THE COURT: YOU DON'T REPRESENT OTHER PEOPLE. ALL
4 YOU REPRESENT IS THIS ONE COMPANY.

5 MS. SANDERSON: CORRECT.

6 THE COURT: SO WHAT DID THEY DO TO THIS ONE COMPANY
7 SPECIFICALLY?

8 MS. SANDERSON: THEY REPRESENTED THAT THEY WERE ONE
9 COMPANY WHEN THEY ARE NOT.

10 THE COURT: SO -- SO A COMPANY -- SO THIS GROUP OF
11 INDIVIDUALS TELLS YOU THAT THEY ARE NOT ACTING INDIVIDUALLY
12 BUT THEY ARE ONE COMPANY AND THAT'S -- AND -- AND THAT'S --

13 MS. SANDERSON: AND --

14 THE COURT: -- A RACKETEERING ACTIVITY?

15 MS. SANDERSON: AND THAT WE ARE GOING TO PAY YOU FOR
16 REFERRING CLIENTS TO US.

17 THE COURT: SO -- SO EVERY TIME THERE'S A BREACH OF
18 CONTRACT, THERE'S A RICO CLAIM?

19 MS. SANDERSON: ABSOLUTELY NOT. ABSOLUTELY NOT. AND
20 THAT IS NOT OUR ARGUMENT.

21 THE COURT: THEN WHAT IS THE ARGUMENT OF RACKETEERING
22 ACTIVITY SPECIFICALLY WITH RESPECT TO THIS SPECIFIC PLAINTIFF?

23 MS. SANDERSON: WITH THIS SPECIFIC PLAINTIFF, HIS
24 INABILITY TO PROSECUTE, TO COLLECT ON THE CONTRACT, TO PURSUE
25 HIS BREACH OF CONTRACT CLAIM IS DUE TO THE RACKETEERING

1 ACTIVITY, AND THAT WAS THE PURPOSE OF THE RACKETEERING
2 ACTIVITY WITH RESPECT TO PLAINTIFF.

3 **THE COURT:** THAT'S -- YOU HAVEN'T ARTICULATED A
4 RACKETEERING ACTIVITY.

5 **MS. SANDERSON:** THE RACKETEERING ACTIVITY WAS TO
6 DEFRAUD PLAINTIFF THROUGH WIRE.

7 **THE COURT:** SO EVERY TIME I HAVE A FRAUDULENT
8 MISREPRESENTATION, I HAVE A RICO CAUSE OF ACTION?

9 **MS. SANDERSON:** WHEN IT'S ASSOCIATION IN FACT BEHIND
10 IT, AND THIS IS PART OF THEIR COMMON PURPOSE AS AN ASSOCIATION
11 IN FACT --

12 **THE COURT:** AGAIN, YOU'RE --

13 **MS. SANDERSON:** THEN YES.

14 **THE COURT:** -- USING CONCLUSORY WORDS FROM THE
15 STATUTE.

16 **MS. SANDERSON:** THE DEFENDANTS HERE ARE A COLLECTION
17 OF INDIVIDUALS AND CORPORATIONS. THAT IS OUR ASSOCIATION OF
18 IN FACT. THEY ARE WORKING WITH A COMMON PURPOSE. THE COMMON
19 PURPOSE IS TO DEFRAUD, INCLUDING DEFRAUD PLAINTIFF.

20 THAT'S WHERE YOU GET FROM BREACH OF CONTRACT TO RICO
21 BECAUSE THE -- THE PURPOSE -- THE COMMON PURPOSE WAS TO USE
22 FRAUD AND TO USE OTHER CRIMINAL MEANS TO AVOID PAYING
23 PLAINTIFF AND OTHERS.

24 **THE COURT:** WHAT CASE CLOSELY -- WHAT IS THE BEST
25 CASE YOU HAVE THAT MATCHES ANYTHING CLOSE TO SAY WHAT YOU'RE

1 ATTEMPTING TO ARTICULATE HERE?

2 **MS. SANDERSON:** ODOM. ODOM V. MICROSOFT. WE HAVE --
3 WE HAVE ALLEGED EACH OF THE ELEMENTS THAT --

4 **THE COURT:** ODOM JUST HAS THE ELEMENTS. ODOM IS NOT
5 THIS FACT PATTERN. WHAT FACT PATTERN COMES ANYWHERE CLOSE TO
6 WHAT YOU'RE TRYING TO ALLEGE?

7 **MS. SANDERSON:** WE -- WE HAVE THE CASE LAW IN OUR
8 PLEADINGS, BUT I ARGUE THAT IT DOES FOLLOW -- THAT IT DOES
9 FOLLOW ODOM.

10 **THE COURT:** ODOM GIVES ME -- I DON'T DISAGREE THAT
11 YOU'RE SAYING THAT ODOM IDENTIFIES THE ELEMENTS OF A CAUSE OF
12 ACTION. IT SAYS PLAINTIFFS MUST ALLEGE ONE, CONDUCT; TWO, OF
13 AN ENTERPRISE; THREE, THROUGH A PATTERN; FOUR, OF RACKETEERING
14 ACTIVITY.

15 **MS. SANDERSON:** YES.

16 **THE COURT:** THAT'S WHAT ODOM SAYS.

17 **MS. SANDERSON:** AND WE ARE HERE ON A MOTION TO
18 DISMISS, AND WE ARE SAYING THAT WE HAVE ALLEGED THAT WITH MORE
19 THAN JUST CONCLUSORY ALLEGATIONS BY EXPLAINING HOW THE
20 PLAINTIFFS (SIC) HAVE COMBINED, WHAT THEIR COMMON PURPOSE IS,
21 AND WHAT THE -- THE PREDICATE ACTS WERE.

22 IT WASN'T CONCLUSORY -- WE JUST SAID, OH, THERE'S AN
23 ENTERPRISE; THEY DID PREDICATE ACTS. WE PROVIDE DETAIL. IT'S
24 FLESHED OUT WITH DETAIL IN OUR COMPLAINT. IT'S NOT CONCLUSORY
25 ALLEGATIONS.

1 **THE COURT:** RESPONSE?

2 **MR. ROTHKEN:** YOUR HONOR, I'M HAPPY TO ANSWER ANY
3 QUESTIONS.

4 **THE COURT:** IF YOU DON'T HAVE ANYTHING TO SAY,
5 THEN -- I ALREADY TOLD YOU I DON'T HAVE A LOT OF QUESTIONS.
6 IF YOU DON'T HAVE ANYTHING TO SAY, YOU DON'T WANT TO ARGUE,
7 WELL, THEN I GUESS THAT'S YOUR PREROGATIVE.

8 DO YOU HAVE AN ARGUMENT IN RESPONSE?

9 **MR. ROTHKEN:** YES, YOUR HONOR. I THINK THE THING TO
10 DO WOULD BE FOR ME TO STEP THROUGH THEIR FIVE CORE ALLEGATIONS
11 AND EXPLAIN WHY THEY'RE NOT RICO.

12 **THE COURT:** ALL RIGHT. COULD GO AHEAD.

13 **MR. ROTHKEN:** AND NUMBER ONE, THEY'RE CLAIMING A
14 BREACH OF CONTRACT, AS YOUR HONOR ARTICULATED. AND THE CORE
15 OF THEIR BREACH OF CONTRACT CLAIM IS A FAILURE TO PAY. AND
16 THEY'RE TRYING TO CONFLATE THAT INTO FRAUD AND CLAIMING THAT
17 TO THE FAILURE TO KEEP YOUR PROMISE TO PAY NOW THROUGH A
18 CONCLUSORY ALLEGATION ELEVATES TO FRAUD AND BECAUSE PART OF
19 WHATEVER THE DISCUSSIONS WERE REGARDING THIS WAS THERE SKYPE,
20 IT'S NOW WIRE FRAUD.

21 AND WE DON'T THINK THAT SATISFIES THE RULE 9B STANDARDS
22 FOR PLEADING FRAUD WITH PARTICULARITY. WE CERTAINLY DON'T
23 THINK IT WOULD EVEN SATISFY *IQBAL* AND *TWOMBLY* IN TERMS OF
24 MANNER AND METHOD IN WHICH THEY PLED FOR MERE CONTRACT
25 BECAUSE, AS INDICATED IN OUR BRIEF, THEY USED THE WORD

1 "DEFENDANTS." THEY WERE USING THE WORD "DEFENDANTS" LIKE THE
2 PARTIES WERE BASICALLY SAYING TO EACH OTHER, AND DEFENDANTS
3 THERE PAY YOU THIS, AND DEFENDANTS WILL PAY DO THAT, AS IF THE
4 LAWSUIT ALREADY HAPPENED AND THESE PERSONS WHO ARE DISCUSSING
5 THIS KNEW WHO THE DEFENDANTS WERE.

6 IN ORDER FOR THIS TO BE A COMPETENT PLEADING, THEY WOULD
7 HAVE TO INDICATE WHO AGREED TO THIS AGREEMENT. WHO AGREED TO
8 BE BOUND. AND WHO, IF THERE'S EVER GOING TO BE A FRAUD
9 ALLEGATION, WOULD BE RESPONSIBLE FOR ANY KIND OF
10 MISREPRESENTATIONS THAT WERE MADE.

11 WE HAVE -- SO IF YOU DON'T HAVE WIRE FRAUD, WE DON'T KNOW
12 WHO THE FOLKS ARE. WE DON'T KNOW THE WHO, WHAT -- WHO, WHAT,
13 WHEN, AND HOW. WE DON'T HAVE A FRAUD CAUSE OF ACTION.

14 AND IN TERMS OF WIRE FRAUD, YOUR HONOR, WE ALSO KNOW THAT
15 THAT HAS TO BE PLED WITH PARTICULARITY. AND AS YOUR HONOR
16 INDICATED, THERE IS NO STANDING BECAUSE THERE'S NO COMPETENT
17 PREDICATE ACT. THERE'S NO PATTERN. AT WORST IF WE WERE TO
18 EMBRACE THEIR VIEW, IT WOULD BE ONE ISOLATED EVENT. AND THERE
19 IS NO PROXIMATE CAUSE OF ANY DAMAGES THAT WERE ASSOCIATED WITH
20 THIS.

21 AND WE ALSO HAVE AS THE NEXT CORE CLAIM BASICALLY SAYING
22 THE USE OF CECASH WAS MISLEADING, LIKE SOMEHOW THAT SHOULD BE
23 ELEVATED INTO A FRAUD THAT MAKES THIS INTO A RICO ENTERPRISE
24 WHEN THEY ALSO INDICATE SOMEWHERE ELSE IN THEIR COMPLAINT THAT
25 WHEN THEY WENT OVER THE CECASH.COM WEBSITE, THEY FIGURED OUT

1 WHO ACTUALLY OWNED IT BY LOOKING AT THE TERMS OF USE.

2 AGAIN, RULE 9B PLAYS A ROLE HERE BECAUSE THEY DON'T
3 DESCRIBE THE WHO, WHAT, WHEN, WHERE AND HOW. THEY DON'T
4 DESCRIBE WHO WAS INVOLVED. THEY DON'T DESCRIBE WHO WAS
5 MISLED. THEY DON'T DESCRIBE REASONABLE RELIANCE. THIS CAN'T
6 BE WIRE FRAUD.

7 AND THIS IS KIND OF THE EQUIVALENT OF SOMEONE SAYING THAT
8 THEY -- YOU KNOW, WHEN THEY REALLY WORK FOR BUENA VISTA OR
9 PIXAR, SAYING, HEY, I WORK FOR DISNEY. WE CAN'T ELEVATE THESE
10 KINDS OF SIMPLISTIC ARGUMENTS INTO RICO SERIOUS CLAIMS,
11 ESPECIALLY GIVEN THE FLIMSY NATURE OF THIS PLEADING.

12 THE NEXT CORE CLAIM THEY HAVE ARE THAT THE LIMITED
13 LIABILITY COMPANIES ARE TOO COMPLEX. FRANKLY, I DON'T
14 UNDERSTAND THE CLAIM. BUT TO THE EXTENT THAT THAT IS ONE OF
15 THEIR ARGUMENTS, SILICON VALLEY AND HOLLYWOOD ARE LITTERED
16 WITH COMPANIES THAT MAKE LIMITED LIABILITY COMPANIES FOR EACH
17 WEBSITE FOR EACH MOTION PICTURE. THEY -- EACH OF THESE
18 WEBSITES AT ISSUE HAVE TERMS OF USE, WHICH THEY ADMITTED IN
19 THEIR COMPLAINT THAT THEY KNEW WHO THE COMPANIES WERE THAT
20 WERE INVOLVED IN RUNNING THEM.

21 THEY HAVE NOT PLED ANYTHING UNDER RULE 9B THAT WOULD BE
22 SPECIFIC ENOUGH FOR US TO UNDERSTAND THE NATURE OF THE FRAUD
23 AND ALL THE OTHER ELEMENTS ASSOCIATED WITH IT AND THE RELIANCE
24 AND THE INJURY. AND IT CERTAINLY CAN'T ACT AS A PREDICATE FOR
25 RICO.

1 WE THEN TURN TO THIS CLAIM THAT THEY'VE ADDED IN THEIR
2 FIRST AMENDED COMPLAINT. I'D LIKE THE COURT TO BE REMINDED
3 THAT WE DID FILE A MOTION TO DISMISS THEIR ORIGINAL COMPLAINT,
4 AND THEY CAME UP WITH THEIR FIRST AMENDED COMPLAINT. AND IT'S
5 RELATIVELY THE SAME, BUT THEY DID ADD THIS ONE THING. THEY
6 DIDN'T LEARN FROM OUR ARGUMENTS THE FIRST TIME AROUND.

7 THEY ADD THIS THING CALLED DECLINERS. AND, AGAIN, IT'S
8 HARD TO REALLY UNDERSTAND WHAT IT IS. IT -- IT LOOKS AND
9 SOUNDS WHOLLY ERRONEOUS. BUT IF I CAN UNDERSTAND WHAT THEY'RE
10 CLAIMING, THEY'RE SAYING SOMETHING ALONG THE LINES OF THERE'S
11 A CERTAIN GROUP OF CONSUMERS WHOSE CREDIT CARDS ARE DECLINED
12 BECAUSE SOME OF THE DEFENDANTS ARE USING FOREIGN CREDIT CARD
13 PROCESSORS, AND THEY HAVE DIFFERENT STANDARDS, AND SO -- THESE
14 DECLINED CONSUMERS ARE THEN SENT OVER TO OTHER FOLKS WHO
15 ATTEMPT TO PROCESS THEM.

16 THIS CLAIM, WHEN IT'S READ CAREFULLY, IS DEVOID OF ANY
17 FACTS. AND, IN FACT, THIS ONE'S PARTICULARLY EGREGIOUS
18 BECAUSE THEY JUST USE A HYPOTHETICAL IN REPLACEMENT OF FACTS
19 AND THEN TRY CONFLATING THE HYPOTHETICAL INTO SOMETHING LIKE
20 ITS ACTUAL PLEADING, AND IT'S NOT.

21 HERE, THEY'RE CLAIMING SOMEHOW THAT THIS IS A PREDICATE
22 ACT, THAT IT'S FRAUD, AND THAT THE BANKS AND CONSUMERS
23 ESSENTIALLY WHO ARE THE VICTIMS OF THIS BUT SOMEHOW WITHOUT
24 EXPLAINING ANYTHING IN THE COMPLAINT ON PROXIMATE CAUSE AND
25 RICO, THE PLAINTIFF'S CLAIMING SOMEHOW THEY'RE INJURED BY

1 THIS, HOW THEY HAVE STANDING.

2 IT SOUNDS MORE LIKE A CLASS-ACTION LAWSUIT FOR A CONSUMER
3 ATTORNEY OR BANK ATTORNEY THAN ANYTHING THAT WOULD HAVE
4 STANDING IN THIS COURTROOM IN THIS CASE.

5 AND THEN THEY MAKE THESE (SIC) ARGUMENT THAT BY USING A
6 FOREIGN BANK, THAT SOMEHOW THEY'RE INJURED BY THAT, BASICALLY
7 MAKING UP A CONTRACT PROVISION WHICH DOESN'T EXIST -- IT'S NOT
8 ARTICULATED -- OF SOME FAKE COVENANT THAT YOU HAVE TO USE ONLY
9 U.S. BANKS.

10 THEY ALSO FRANKLY DIDN'T INDICATE IN THE COMPLAINT THE
11 COMPLEXITIES OF VISA AND MASTERCARD INTERNATIONAL VERSUS
12 U.S.A. THEY DO ACKNOWLEDGE IN THE COMPLAINT THAT THESE
13 WEBSITES ARE FOREIGN OWNED. THEY'RE NOT U.S. WEBSITES. ONE
14 WOULD AT LEAST IMAGINE THAT FOREIGN WEBSITES WOULD HAVE SOME
15 REQUIREMENTS ON USING INTERNATIONAL BANKS AS OPPOSED TO U.S.
16 BANKS FOR CREDIT CARD PROCESSING, BUT THAT'S NOT EXPLAINED.

17 AND IN ANY EVENT, IT'S NOT A PREDICATE ACT. IT'S NOT PLED
18 WITH PARTICULARITY. THERE'S NOT ENOUGH SPECIFICITY ON THE
19 REGISTRATION PATH USERS WENT -- CONSUMERS WENT THROUGH, WHAT
20 THEY WERE TOLD, WHAT THEY RELIED ON, AND WHAT THEIR TERMS OF
21 USE ARE, AND EXACTLY WHAT HAPPENED IF THIS EVER EVEN OCCURRED.

22 THEY'RE NEXT ATTEMPT AT CREATING A PREDICATE ACT IS
23 POST-LITIGATION, WHAT THEY CALL KIND OF TREATMENT OF
24 WITNESSES, PRIMARILY AIMED AT SOMETHING THAT HAPPENED IN A
25 PHOENIX TRADE SHOW WHERE THE BEST THAT WE COULD TELL, IT LOOKS

1 LIKE JUST FROM THE FEW FACTS THAT THEY ALLEGED, SOME OF THE
2 DEFENDANTS WERE GIVING THEIR VIEWS ON THE MERITS OF
3 PLAINTIFF'S LAWSUIT AND PROVIDING THEIR OWN ASSOCIATES OR
4 THEIR OWN CUSTOMERS WITH THINGS THAT ONE DOES IN AN AFFILIATE
5 PROGRAM, WHICH IS HOTELS ROOMS, AND THINGS OF THAT NATURE.

6 THERE CERTAINLY WASN'T ANYTHING ALLEGED THAT ARISES TO THE
7 KIND OF CRIMINAL MISCONDUCT AND THE PARTICULARITY REQUIRED BY
8 RICO IN THIS CONTEXT TO RAISE IT TO TAMPERING OF WITNESSES.

9 WHAT THIS LOOKS LIKE IS NORMAL BUSINESS AFFAIRS AND THEN A
10 DEFENDANT -- A CORPORATE DEFENDANT DOING WHAT THE FORTUNE
11 1,000 DOES IN THE FAST MAJORITY OF LITIGATIONS BROUGHT AGAINST
12 THEM WHERE THEY PROCLAIM THROUGH THEIR PUBLIC RELATIONS
13 PERSONNEL THAT THE CLAIMS HAVE NO MERITED.

14 AND THAT'S NOT THE MAKINGS OF A RICO CLAIM. NOT THE
15 MAKINGS OF PREDICATE ACTS AND CERTAINLY THERE WAS NO PROXIMATE
16 CAUSE, INJURY, THINGS OF THAT NATURE THAT WERE ALLEGED.

17 SO WE'RE THEN LEFT, YOUR HONOR -- THOSE ARE THE TOP FIVE.
18 WE'RE LEFT WITH THIS WHOLE CONCEPT OF --

19 **THE COURT:** I GUESS I ONLY HEARD YOU ARTICULATE FOUR.
20 SO GIVE ME THE -- THE HEADLINE AGAIN. THE BREACH OF
21 CONTRACT --

22 **MR. ROTHKEN:** ALL RIGHT.

23 **THE COURT:** -- WAS ONE.

24 **MR. ROTHKEN:** YES. I'M SORRY, YOUR HONOR.

25 I MELDED TWO TOGETHER, THE BREACH OF CONTRACT AND THE

1 FAILING TO PAY. THE USE OF C --

2 **THE COURT:** SO THAT IS TWO?

3 **MR. ROTHKEN:** THAT'S ONE.

4 THE CECASH AND THE OTHER -- ALLEGATION THAT IT'S
5 MISLEADING. THE USE OF LIMITED LIABILITY COMPANIES IN A
6 COMPLEX RELATIONSHIP. THE MECHANISM OF DECLINERS AND -- AND
7 HANDLING -- HANDLING THEM OFF TO OTHER BANKS AND OTHER
8 COMPANIES.

9 THE TREATMENT OF WITNESSES. AND THEN THE NEXT ONE WHICH I
10 MELDED TOGETHER, WHICH I SHOULDN'T HAVE, WHICH IS COMMENTS
11 ABOUT THE LITIGATION.

12 OR -- AND THAT ONE IS MORE GEARED TOWARDS THEIR LANHAM ACT
13 CLAIM.

14 AND I'D LIKE TO MAKE THIS POINT ABOUT THE LANHAM ACT.
15 THERE IS NOT A LOT OF CASES ACTUALLY ON THE LANHAM ACT WHEN WE
16 LOOK THROUGH THEM.

17 **THE COURT:** YOU'RE RIGHT. I HAD TO TRY A CASE AND
18 FIGURE OUT JURY INSTRUCTIONS ON THE LANHAM ACT.

19 **MR. ROTHKEN:** AND -- YES. AND I BEEN DOING THIS FOR
20 20 YEARS, AND I'M STILL PERPLEXED BY MANY ASPECTS OF IT, TO
21 BE -- TO BE QUITE FRANK, BUT OUR ARGUMENT ABOUT THE LANHAM ACT
22 HERE -- SO LANHAM ACT IS DESIGNED IN THIS CONTEXT TO BE ABOUT
23 PROMOTIONS AND ADVERTISEMENTS AIMED AT GOODS AND SERVICES FOR
24 AN APPRECIABLE IMPACT ON CONSUMERS.

25 DISCUSSING THE MERITS OF A CASE OR YOUR DISAGREEMENT OVER

1 CONTRACTUAL RELATIONS IN ONE-OFF CONVERSATIONS -- AND BASED ON
2 THE ALLEGATIONS, IT LOOKS LIKE IT COULD HAVE BEEN COULD HAVE
3 ALL BEEN IN PHOENIX -- THAT IS NOT PROMOTION OR ADVERTISEMENTS
4 RELATED TO GOODS AND SERVICES. THAT'S DISCUSSION OF WHAT YOU
5 THINK OF A CONTRACT OR -- OR A LITIGATION. THAT'S PROTECTED
6 SPEECH. AND THERE'S A COLLISION BETWEEN PROTECTED SPEECH AND
7 THE LANHAM ACT. AND THE LANHAM ACT DOES HAVE A VERY SENSITIVE
8 BALANCE TO MAKE SURE IT DOESN'T REACH TOO FAR.

9 AND, AGAIN, I MADE THE POINT BEFORE THAT POINT IF WE GO
10 TOO FAR WITH THIS, WE'RE GOING TO REACH STANDARD BUSINESS
11 CONDUCT AND WE'LL OPEN THE FLOOD GATES TO MAKE ALMOST ANY
12 CONTRACT CLAIM INTO A LANHAM ACT CLAIM, ESPECIALLY AFTER THE
13 CONTRACT CLAIM IS FILED AND YOU HAVE FOLKS GOING OFF AND
14 DISCUSSING HOW THEY DISAGREE WITH IT OR THEY DON'T LIKE WHAT
15 THE PLAINTIFF DID, OR HAVING ONE OFF-CONVERSATIONS IN HOTELS
16 ABOUT THE PLAINTIFF'S LAWSUIT OR THEIR VIEWS ABOUT THE CASE.

17 IN SOME OTHER CONTEXTS, ONE MAY EVEN CONSIDER THAT TO BE A
18 SLAP.

19 THEN WE HAVE A SITUATION WHERE BECAUSE IT WASN'T PLED WITH
20 SUFFICIENT PARTICULARITY, IT'S HARD TO EVEN SEE HOW THIS WAS
21 EVEN USED IN INTERSTATE COMMERCE, WHICH WAS A PREREQUISITE FOR
22 THE IMPLEMENTATION OF LANHAM ACT.

23 DID FIND ONE CASE RECENTLY WHERE A COURT FOUND THAT
24 BECAUSE THERE WERE DISCUSSIONS BASICALLY AND -- THAT WERE KIND
25 OF MICRO-DISCUSSIONS IN A LOCATION, IT WASN'T INTERSTATE

1 COMMERCE.

2 SO HERE, IT LOOKS LIKE THAT IS NOT -- INTERSTATE COMMERCE
3 PRONG HAS NOT BEEN REACHED.

4 IN ANY EVENT, THE THINGS THAT HAPPEN HERE DO NOT IMPLICATE
5 THE LANHAM ACT, WHETHER IT'S COUCHED IN LOOKING AT THE FOUR
6 CORNERS OF THE STATUTE OR COUCHED IN TERMS OF -- OF A RULE OF
7 REASON.

8 AS FAR AS -- THOSE ARE THE PRONGS.

9 I WANT TO DISCUSS ENTERPRISE JUST FOR A SECOND BECAUSE
10 IT'S KIND OF SIMILAR TO WHY THE CONTRACT CLAIM FAILS. BECAUSE
11 WHEN YOU LOOK AT THE FOUR CORNERS OF THE COMPLAINT, THERE'S
12 JUST A WHOLE BUNCH OF ENTITIES AND PERSONS, YOU KNOW, INCLUDED
13 IN THAT. MS. LUHAR FORTUNATELY WE GOT DISMISSED.

14 **THE COURT:** I WAS GOING TO ASK ABOUT THAT. SO LUHAR?

15 **MR. ROTHKEN:** YES.

16 **THE COURT:** SHE'S -- IS THAT ON -- ON THE DOCKET?

17 **MR. ROTHKEN:** YES.

18 **THE COURT:** OKAY.

19 GO AHEAD.

20 **MR. ROTHKEN:** AND THEY'RE USING AN ASSOCIATION IN
21 FACT ENTERPRISE THEORY IN THEIR COMPLAINT. AND WE'RE MINDFUL
22 THAT THE SUPREME COURT AND NINTH CIRCUIT TAKES ACTUALLY A MORE
23 EMBRACING VIEW FOR THE PLAINTIFF IN DETERMINING WHAT AN
24 ASSOCIATION-IN-FACT ENTERPRISE IS.

25 BUT THE CASES ALSO SAY THAT YOU GOT TO HAVE MORE THAN JUST

1 LUMPING EVERYONE TOGETHER IN CONCLUSORY WAY AND SAYING THEY'RE
2 ALL AIDERS AND ABETTORS OR COCONSPIRATORS OR THEY'RE INVOLVED.

3 THERE NEEDS TO BE ACTUALLY A DESCRIPTION OF WHO A PARTY
4 IS, WHAT THEY'RE ROLE IS, WHEN THEY WERE INVOLVED, SO THAT
5 WE'RE NOT ENGULFING IN AN OVERBROAD MANNER -- EVEN IF ONE
6 COULD ACTUALLY MAKE OUT A PREDICATE ACT -- FOLKS WHO MEANT NO
7 HARM, FOLKS WHO OUGHT NOT BE TARNISHED BY BEING INVOLVED IN A
8 RICO CASE JUST BECAUSE THEY HAPPEN TO HAVE A CORPORATE FORUM.

9 AND SO THIS CLAIM IS WHOLLY DEFICIENT IN LAYING OUT THE
10 INFORMATION THAT RICO WOULD REQUIRE TO DETERMINE IF EVERYTHING
11 ELSE WAS TRUE, IF -- IF YOU COULD GET TO FIRST BASE ON
12 STANDING. AND IF YOU CAN GET TO FIRST BASE ON -- ON PREDICATE
13 ACTS, AND A PATTERN, AND THE PATTERN IS NOT THERE AT ALL, AND
14 IF YOU COULD SHOW PROXIMATE CAUSE, WELL, WHO OUGHT TO BE
15 NAMED?

16 AND HERE IT LOOKS LIKE IT'S -- IT'S VOID OF ANY KIND OF
17 PARTICULARITY FOR THERE TO BE ANY GOOD-FAITH UNDERSTANDING.
18 AND AS A SYMPTOM OF THAT, WE HAD MS. LUHAR DISMISSED AND,
19 FRANKLY, WE'RE HOPING THAT YOUR HONOR DISMISSES THE RICO
20 CLAIMS WITH PREJUDICE SO THAT WE'RE NOT FORCED TO BRING
21 MOTIONS FOR SUMMARY JUDGMENT OR GO THROUGH BURDENSOME
22 ELECTRONIC DISCOVERY FOR FOLKS WHO SHOULD NEVER BE INVOLVED IN
23 ANY KIND OF FEDERAL ACTION.

24 THIS -- YOUR HONOR, THIS CASE IS AT MOST GARDEN-VARIETY
25 BREACH OF CONTRACT CASE BY SOME GENTLEMAN WHO SIGNED UP FOR AN

1 ONLINE AFFILIATE PROGRAM, WHO'S TRYING TO AVOID THE
2 BOILERPLATE TERMS OF USE AND THE ARBITRATION CLAUSE AND TO
3 ENGULF A BOATLOADFULL OF -- OF PERSONS TO BASICALLY MAKE A
4 FEDERAL CASE OUT OF SOMETHING THAT BELONGS, FRANKLY, IN STATE
5 COURT OR ARBITRATION.

6 SO I'LL BE HAPPY TO ANY ANSWER ANY OTHER QUESTIONS --

7 **THE COURT:** WELL, I SAW THE ISSUE WITH RESPECT TO
8 ARBITRATION. SO -- IN TERMS OF THE REPLY, BUT THERE IS NO
9 MOTION TO COMPEL ARBITRATION THAT HAS BEEN BROUGHT.

10 **MR. ROTHKEN:** THAT IS CORRECT, YOUR HONOR. THE IRONY
11 OF THIS IS THAT THE THREE ENTITIES WHO ACTUALLY RUN THE
12 WEBSITES WHERE TRAFFIC WAS SENT, WHERE AS AN OFFER OF PROOF,
13 PLAINTIFF CLICKED THROUGH ON THE AFFILIATE PROGRAM TERMS OF
14 USE. THEY'RE THE ONES WITH THE ARBITRATION CLAUSE. THEY HAVE
15 NOT BEEN SERVED. AND THEY'RE SITTING IDLY BY HOPING THAT THIS
16 RICO CLAIM IS THE DISMISSED.

17 **THE COURT:** AND WHO ARE THOSE THREE?

18 **MS. SANDERSON:** FROM MEMORY, YOUR HONOR, BY THEIR
19 TRADE NAMES, IT WOULD BE CECASH.COM, WHICH I THINK IS HARKLET.
20 IT WOULD BE CITYSEX.COM, WHICH I THINK IS NAUTELL. AND IT
21 WOULD BE IBALLERS, WHOSE CORPORATE NAME I FORGOT.

22 THEY EACH HAVE ARBITRATION CLAUSES. ONE OF THEM -- TWO OF
23 THEM ARE FOR LOS ANGELES, ONE'S FOR JAMS, ONE'S FOR ADR
24 SERVICES. ONE'S IN CYPRESS. I MET AND CONFERRED WITH COUNSEL
25 AT THE BEGINNING OF THE CASE AND OFFERED TO HAVE THIS CASE GO

1 TO ARBITRATION, AND THEY DECLINED.

2 WE MET AGAIN DURING OUR MEET AND CONFER FOR THE CASE
3 MANAGEMENT CONFERENCE STATEMENT. WE OFFERED TO HAVE THE WHOLE
4 THING GO TO ARBITRATION. THEY DECLINED.

5 THOSE THREE PARTIES ARE NOT -- THEY BELIEVE THIS CASE IS
6 MALICIOUS. THEY BELIEVE THAT IF THERE'S GOING TO BE A CLAIM,
7 IT OUGHT TO BE ARBITRATED, AND SO THEY'RE SITTING ON THE
8 SIDELINES WATCHING WHAT HAPPENS WITH THIS MOTION TO DISMISS.

9 **THE COURT:** I WENT THROUGH THE DEFENDANTS HERE, SO WE
10 HAVE THEN THREE INDIVIDUAL DEFENDANTS WHO HAVE BEEN SERVED.
11 YOUR 120 DAYS IS UP TOMORROW. YOU UNDERSTAND THAT.

12 **MS. SANDERSON:** WE -- WE RECEIVED AN EXTENSION FROM
13 THE COURT THAT GOES TO NOVEMBER. AND THE PROCESSOR SERVERS IN
14 CYPRESS ARE WORKING ON SERVING THE CYPREATE (PHONETIC)
15 DEFENDANTS.

16 **THE COURT:** WHICH IS THE CYPRESS DEFENDANTS?

17 **MS. SANDERSON:** CYPRESS DEFENDANTS ARE HARKLET
18 ENTERPRISES; NUNATON COMPANY AND NAUTELL CAPITAL, AND ALACRE
19 TRADING, THOSE FOUR.

20 **THE COURT:** NUNATON COMPANY IS CYPRESS AS WELL?

21 **MS. SANDERSON:** YES. YES.

22 **THE COURT:** AND THEN WHAT ABOUT CASH TRAFFIC?

23 **MS. SANDERSON:** CASH TRAFFIC WE WERE UNABLE TO SERVE
24 BECAUSE WE HAVEN'T BEEN ABLE TO DETERMINE THE JURISDICTION OF
25 THAT COMPANY WHERE IT'S ORGANIZED.

1 **THE COURT:** DO YOU HAVE ANY INFORMATION ON CASH
2 TRAFFIC?

3 **MR. ROTHKEN:** I CAN LOOK IT UP RIGHT NOW. MAY I HAVE
4 A SECOND, YOUR HONOR?

5 (PAUSE IN THE PROCEEDINGS.)

6 **MR. ROTHKEN:** OKAY. LET'S SEE.

7 **THE COURT:** HAS THERE BEEN ANY THOUGHT OF THE CYPRESS
8 COMPANIES ACCEPTING SERVICE?

9 **MR. ROTHKEN:** YES, YOUR HONOR. THERE HAS BEEN
10 THOUGHT, BUT THERE -- THERE'S OTHER COUNSEL ALSO WORKING IN
11 THIS. CYPRESS OBVIOUSLY IS A EUROPEAN UNION, AND THEY HAVE AN
12 ARBITRATION CLAUSE FOR CYPRESS. AND AT THIS POINT, THEY WANT
13 TO ASSERT THEIR RIGHTS BECAUSE THEY THINK THE CLAIM IS
14 FRIVOLOUS, AND THEY DID OFFER WITHOUT ANY FANFARE AT ALL JUST
15 TO ARBITRATE. IT IS NOT DIFFICULT TO SERVE SOMEONE IN THE
16 EUROPEAN UNION.

17 IN TERMS OF --

18 **THE COURT:** AND CECASH IS HARKLET; IS THAT CORRECT?

19 **MR. ROTHKEN:** YES, YOUR HONOR. YOU ASKED ABOUT --

20 **THE COURT:** CASH TRAFFIC LIMITED.

21 **MR. ROTHKEN:** YEAH. THAT'S -- CASHTRAFFIC.COM IS
22 OWNED BY NUNATON COMPANY LIMITED. WE DON'T HAVE SOMETHING
23 CALLED CASH TRAFFIC LIMITED IN OUR SPREADSHEET HERE, SO IF IT
24 DOES EXIST, I APOLOGIZE, BUT --

25 **THE COURT:** WELL, I WAS JUST TAKING --

1 **MR. ROTHKEN:** SO CASH TRAFFIC LIMITED IS A DEFUNCT
2 COMPANY. IT DOESN'T EXIST ANYMORE.

3 **THE COURT:** IT WAS HELPFUL, TO ME, MS. SANDERSON TO
4 AT LEAST UNDERSTAND FROM THE DEFENDANTS' PERSPECTIVE WHAT THEY
5 UNDERSTOOD YOUR FACTUAL PREDICATE TO BE IN SPECIFIC TERMS,
6 WHICH IS WHAT I WAS ATTEMPTING TO GET YOU TO ARTICULATE.

7 IF YOU'D LIKE, YOU CAN RESPOND TO THOSE PRECISE ARGUMENT
8 ARTICULATIONS OF THE PREDICATE ACTS HERE. YOU DON'T NEED TO
9 GO BACK ON THE BREACH OF CONTRACT. I GOT THAT ONE FROM YOU.

10 BUT THE OTHER FOUR, YOU CAN RESPOND IF YOU'D LIKE.

11 **MS. SANDERSON:** SURE.

12 THE SECOND ONE, THAT THERE WAS FRAUD BY REPRESENTING THAT
13 DEFENDANTS WERE A SINGLE ENTITY CALLED CECASH. COUNSEL HAS
14 MADE MANY ARGUMENTS ABOUT HOW THIS IS A COMMON PRACTICE.
15 TO --

16 **THE COURT:** WELL, HOLD ON. FIRST OF ALL, IS THAT --
17 IS IT YOUR VIEW THAT THAT'S A PREDICATE ACT?

18 **MS. SANDERSON:** YES.

19 **THE COURT:** OKAY.

20 **MS. SANDERSON:** AND OUR VIEW THAT DIFFERENTIATES IT
21 FROM JUST AN ORDINARY CORPORATION -- YOU KNOW, CORPORATE
22 CONGLOMERATE USING VARIOUS LLC'S OR BUSINESSES IS THAT THEY
23 ARE NOT USED WITH THE INTENTION OF DEFRAUDING. THEY ARE USED
24 WITH INTENTION OF ISOLATING LIABILITY BUT NOT TO INTENTIONALLY
25 CONFUSE THOSE WITH WHICH THEY DO BUSINESS.

1 AND WE BELIEVE THAT'S THE DIFFERENCE HERE. AND THAT'S THE
2 DIFFERENCE BETWEEN JUST A CORPORATION THAT HAS A LOT OF
3 SUBSIDIARIES AND AN ASSOCIATION IN FACT, IS THE COMMON PURPOSE
4 TO DEFRAUD.

5 AND HERE, SPECIFICALLY, WITH RESPECT TO THIS PLAINTIFF,
6 THE INTENT WAS TO DEFRAUD PLAINTIFF INTO THINKING HE WAS DOING
7 BUSINESS WITH A SINGLE ENTITY THAT DOES BUSINESS AS CECASH.COM
8 AND ONLY AFTERWARDS WHEN HE TRIES TO FIGURE OUT WHO OWES ME
9 THIS MONEY UNDER THIS CONTRACT, IS IT CLEAR THAT IT IS A WEB
10 INTENDED TO DECEIVE INCLUDING THAT, YOU KNOW, ONE OF THE
11 COMPANIES THAT'S TIED TO ONE OF THE WEBSITES AT ISSUE, WE HAVE
12 JUST LEARNED IS DEFUNCT.

13 WE'VE ALSO HAD A ISSUE IN THE CASE WHERE WE HAVE INTERNET
14 LIVE, INTERNET BRAND, AND INTERNET BUSINESS SERVICES, THEY'VE
15 EACH FILED A SEPARATE MOTION TO DISMISS. THEY'VE EACH
16 APPEARED SEPARATELY IN THE CASE, ONLY AT ONE POINT TO BE,
17 LIKE, OH, WE JUST REMEMBERED INTERNET BUSINESS SERVICES IS A
18 DBA OF ONE OF THE OTHER ONES; WE'LL FIGURE OUT WHO.

19 IT'S THESE -- THIS PROBLEM, THIS WEB THAT EVEN DEFENDANTS
20 THEMSELVES CANNOT KEEP STRAIGHT THAT ELEVATES THIS TO AN
21 ASSOCIATION-IN-FACT ENTERPRISE.

22 **THE COURT:** ANYTHING ELSE?

23 **MS. SANDERSON:** AS TO THE SECOND ELEMENT, NO.

24 AS TO THE ISSUE REGARDING THE SALE OF DECLINE TRAFFIC, AS
25 WE STATED IN OUR OPPOSITION, THE HYPOTHETICAL WAS PROVIDED FOR

1 BACKGROUND INFORMATION. IT CAN BE COMPLETELY DISREGARDED AND
2 THE CLAIM STILL STANDS. WE ARE NOT ASKING THE COURT TO DECIDE
3 THAT WE'VE STATED A CLAIM FOR THIS PARTICULAR PREDICATE ACT OF
4 FINANCIAL INSTITUTION FRAUD BASED ON THE HYPOTHETICAL
5 WHATSOEVER.

6 PLAINTIFF HAS BEEN INJURED. PLAINTIFF IS WITHIN THE CLASS
7 OF PEOPLE WHO HAVE BEEN INJURED BY THIS ACTIVITY IN THAT
8 TRAFFIC THAT HE SHOULD, UNDER THE CONTRACT, GET A COMMISSION
9 OR REFERRAL FEE FOR IS DIVERTED ELSEWHERE. HAS DECLINED
10 TRAFFIC.

11 WHEN WE GET TO THE ARGUMENT ABOUT --

12 **THE COURT:** -- THAT'S THE PREDICATE ACT.

13 **MS. SANDERSON:** -- FINANCIAL INSTITUTION FRAUD AND
14 MONEY LAUNDERING --

15 (PAUSE IN THE PROCEEDINGS.)

16 **MS. SANDERSON:** WHEN WE GET TO COUNSEL'S ARGUMENTS
17 THAT WE'RE SAYING THE LLC SITUATION IS TOO COMPLEX, I BELIEVE
18 THAT I'VE ALREADY ADDRESSED THAT, THAT WE'RE NOT SAYING THAT
19 HAVING MULTIPLE LLC'S OR EVEN HAVING INTERNATIONAL LLC'S IS A
20 PROBLEM. IT'S WHEN THEY'RE PURPOSELY USED TO DEFRAUD, MISLEAD
21 AND CONCEAL THAT IT'S A PROBLEM, THAT IT BECOMES AN
22 ASSOCIATION IN FACT.

23 AND AS TO THE LANHAM ACT CLAIMS, OUR --

24 **THE COURT:** WELL, YOU HAVEN'T DEALT WITH THE
25 POST-LITIGATION DISCUSSIONS WITH INDIVIDUALS.

1 **MS. SANDERSON:** THE POST-LITIGATION DISCUSSIONS WITH
2 INDIVIDUALS, AGAIN, IT'S NOT WRONG TO TALK ABOUT A CASE WITH
3 THIRD PARTIES. HERE, THOUGH, THE ELEVATING FACTOR IS THAT IT
4 WAS DONE -- FAVORS WERE GIVEN IN EXCHANGE FOR FAVORABLE
5 TESTIMONY. THAT EXCHANGE IS, YOU KNOW, THE PREDICATE ACT OF
6 WITNESS TAMPERING.

7 **THE COURT:** WHERE ARE THERE ALLEGATIONS ABOUT WHAT
8 THEY'VE ASKED THEM TO TESTIFY TO?

9 **MS. SANDERSON:** THEY ARE IN -- IF YOU'LL JUST GIVE ME
10 ONE MOMENT.

11 **THE COURT:** YOU HAVE WITNESSES WHO'VE SAID THAT THEY
12 WERE TOLD TO MAKE CERTAIN STATEMENTS DURING LITIGATION?

13 **MS. SANDERSON:** WE HAVE A REPRESENTATION FROM COUNSEL
14 THAT THEY OBTAINED A FAVORABLE DECLARATION, SO SWORN
15 TESTIMONY, FROM ONE OF THESE WITNESSES THAT IS CONTRARY TO
16 WHAT THE WITNESS PREVIOUSLY HAD TOLD US WAS THEIR POSITION OF
17 EVENTS, AND IT HAPPENED AFTER THESE FAVORS WERE GIVEN TO THE
18 WITNESSES.

19 **THE COURT:** WHERE IS THAT?

20 **MS. SANDERSON:** IT IS --

21 (PAUSE IN THE PROCEEDINGS.)

22 **MS. SANDERSON:** THE GENERAL SECTION BEGINS IN
23 PARAGRAPH 94 OF THE FIRST AMENDED COMPLAINT. SPECIFIC TO THE
24 TESTIMONY THAT WAS ELICITED, PARAGRAPHS 105 THROUGH 107.

25 (PAUSE IN THE PROCEEDINGS.)

1 **MS. SANDERSON:** TO CLARIFY --

2 **THE COURT:** AND YOU ARE MAKING THESE REPRESENTATIONS
3 IN A PLEADING TO THE COURT UNDER YOUR OBLIGATIONS UNDER
4 FEDERAL RULE --

5 **MS. SANDERSON:** YES, YOUR HONOR.

6 **THE COURT:** -- 11 KNOWING WHAT? WHAT IS THE -- WHAT
7 IS THE KNOWLEDGE UPON WHICH YOU'VE MADE THESE ALLEGATIONS?

8 **MS. SANDERSON:** WE HAVE WITNESSES IN THE CASE WHO
9 TOLD OUR CLIENT PRIOR TO FILING THE CASE THAT THEY SIDED WITH
10 OUR CLIENT'S SIDE OF EVENTS.

11 **THE COURT:** YOU HAVE INDEPENDENT OBLIGATIONS AS AN
12 OFFICER OF THE COURT. WHAT HAVE YOU DONE?

13 **MS. SANDERSON:** I'M RELYING ON MY CLIENT, WHICH I'M
14 ALLOWED TO RELY ON THE INFORMATION THAT MY CLIENT HAS PROVIDED
15 ME BECAUSE I HAVE NOT UNCOVERED ANYTHING TO THE CONTRARY.

16 AND THEN I'M RELYING ON THE FACT THAT -- AND IS IT SEEMS
17 TO BE ADMITTED HERE IN COURT THAT THERE WAS A CONVENTION AND
18 FAVORS WERE GIVEN TO THESE WITNESSES.

19 AND THEN I'M RELYING ON COUNSEL'S REPRESENTATION THAT THEY
20 HAD OBTAINED TESTIMONY, A SWORN DECLARATION, THAT COMPLETELY
21 CONTRADICTED WHAT THE WITNESS, PRIOR TO THE FAVORS, HAD TOLD
22 MY CLIENT THAT THEY --

23 **THE COURT:** WELL, WHY DO WE HAVE TO TALK IN
24 GENERALITIES? WHAT IS IT? TELL ME WHAT IT IS.

25 **MS. SANDERSON:** COUNSEL WILL NOT -- HAS NOT PRODUCED

1 THE DECLARATION FOR ME.

2 **THE COURT:** SO YOU DON'T KNOW -- YOU DON'T HAVE ANY
3 SPECIFICS?

4 **MS. SANDERSON:** I DO -- IT HAS BEEN INDICATED, AND I
5 WANT TO BE CLEAR THAT IT'S INDICATED, TO -- TO US THAT THE
6 WITNESS IS GOING TO SAY THAT THEY ALWAYS UNDERSTOOD THAT THEY
7 WERE NEVER -- PLAINTIFF WAS NEVER GOING TO BE PAID A REFERRAL
8 FEE FOR REACTIVATING THIS NETWORK'S ACCOUNT WITH THE
9 DEFENDANTS.

10 **THE COURT:** SO A THIRD-PARTY WITNESS --

11 **MS. SANDERSON:** YES.

12 **THE COURT:** -- TOLD YOUR CLIENT WHO TOLD YOU THAT THE
13 DEFENDANTS TOLD THE THIRD-PARTY WITNESS THAT THEY WEREN'T
14 GOING TO BE PAID? AND THAT'S THE BASIS UPON WHICH WE HAVE --

15 **MS. SANDERSON:** NO.

16 **THE COURT:** -- PARAGRAPHS 105 THROUGH -7?

17 **MS. SANDERSON:** THE WITNESS TOLD MY CLIENT, YES, YOU
18 SHOULD GET PAID FOR THE REFERRAL AS A RESULT OF REFERRING AND
19 REACTIVATING OUR COMPANY. THE WITNESS THEN WENT TO A
20 CONVENTION. THEY WERE BUMPED UP TO A DIFFERENT HOTEL THAT WAS
21 FAR AWAY FROM MY CLIENT. THEY WERE TREATED TO LUXURY DINNERS,
22 AFTER WHICH COUNSEL HAS REPRESENTED THAT THEY OBTAINED A
23 DECLARATION FROM THE WITNESS INDICATING THAT THE WITNESS WILL
24 SAY NO, IT WAS MY UNDERSTANDING THEY WERE NEVER TO BE PAID
25 REFERRALS FOR REACTIVATING OUR COMPANY WITH DEFENDANT, THE

1 COMPLETE OPPOSITE.

2 **THE COURT:** IS THERE ANYTHING ELSE THAT FORMS THE
3 BASIS OF THAT ALLEGATION?

4 **MS. SANDERSON:** THAT'S THAT, YOUR HONOR.

5 WE HAVE HAD -- I MEAN, WE'VE HAD ISSUES WHERE WE'VE TRIED
6 TO SERVE SUBPOENAS ON THIS WITNESS THAT --

7 **THE COURT:** I BELIEVE THAT JUDGE CORLEY'S HANDLING
8 THAT.

9 **MS. SANDERSON:** SHE DID.

10 **THE COURT:** SO --

11 **MS. SANDERSON:** SHE DID STAY IT. OUR ISSUE WAS THAT
12 THE COUNSEL FOR THE WITNESS APPEARS TO HAVE BEEN RETAINED BY
13 DEFENDANTS.

14 **THE COURT:** AND WHY IS IT THAT THIS WITNESS'S OPINION
15 MATTERS IF THERE'S A CONTRACT?

16 **MS. SANDERSON:** BECAUSE THERE WAS A REFERRAL. THE
17 WHOLE BASIS OF THE CONTRACT IS I'M GOING TO REFER THESE
18 CLIENTS. I THEREFORE REFERRED THIS WITNESS, THIS CLIENT, AND
19 SO THEIR TESTIMONY IS RELEVANT AS TO WHAT EVERYONE'S
20 UNDERSTANDING WAS AT THE TIME OF THE REFERRAL.

21 **THE COURT:** ISN'T THERE SOME WRITING THAT DOCUMENTS
22 THAT THE PLAINTIFF REFERRED A PARTICULAR PARTY?

23 **MS. SANDERSON:** WE BELIEVE SO, YES.

24 **THE COURT:** IS THE ARGUMENT THAT -- DOES HE HAVE AN
25 OPINION --

1 **MS. SANDERSON:** YES.

2 **THE COURT:** -- THAT --

3 **MS. SANDERSON:** THAT THEY'RE GOING TO SAY THAT
4 PLAINTIFF WAS MISTAKEN.

5 **THE COURT:** THAT PLAINTIFF WAS MISTAKEN ABOUT WHAT?

6 **MS. SANDERSON:** AS TO WHETHER HE WAS GOING TO EARN A
7 REFERRAL FEE.

8 **THE COURT:** LOOK, THAT'S -- THAT'S -- THE THIRD
9 PARTY'S OPINION ABOUT THE APPLICATION OF A CONTRACT IS NOT
10 NECESSARILY RELEVANT. THE -- THE THIRD PARTY IS CLAIMING THAT
11 HE WILL OR SHE WILL DENY THAT HE OR SHE WAS EVER REFERRED IN
12 THE FIRST PLACE. THAT IS A FACTUAL ISSUE AS OPPOSED TO A
13 LEGAL CONCLUSION.

14 I'M TRYING TO UNDERSTAND WHICH IT IS.

15 **MS. SANDERSON:** IT'S A FACTUAL ISSUE, YOUR HONOR.
16 AND JUST TO -- THIS IS ABOUT OUR PREDICATE ACT FOR WITNESS
17 TAMPERING. AND SO ULTIMATELY, THE EFFECT OF THE TESTIMONY IS
18 IRRELEVANT TO WHETHER WE HAVE STATED A CLAIM FOR IT.

19 **THE COURT:** ALL RIGHT. ANY RESPONSES ON THIS?

20 **MR. ROTHKEN:** OKAY. LET ME JUST SEE IF I CAN
21 UNDERSTAND THIS, YOUR HONOR.

22 PLAINTIFF'S COUNSEL THROUGH A CLIENT SPOKE TO A THIRD
23 PARTY AND WAS LED TO BELIEVE THAT THEY CHANGED THEIR VIEW AND
24 THAT A DECLARATION WAS MADE IN A MANNER THAT WOULD BE
25 TAMPERING SO THAT WOULD THEN CONSTITUTE WITNESS TAMPERING

1 BECAUSE THEY WERE LAVISHED WITH A HOTEL ROOM.

2 IS THAT ESSENTIALLY THAT -- I MEAN, IS THAT YOUR
3 UNDERSTANDING, YOUR HONOR?

4 **THE COURT:** I DON'T ANSWER QUESTIONS.

5 **MR. ROTHKEN:** OH, I'M JUST TRYING TO UNDERSTAND WHAT
6 I'M -- ALL RIGHT.

7 ALL RIGHT. LET ME TELL YOU WHAT I UNDERSTAND.

8 **THE COURT:** DO YOU HAVE A DECLARATION?

9 **MR. ROTHKEN:** ME? NO.

10 **THE COURT:** WHO HAS THE DECLARATION?

11 **MR. ROTHKEN:** OH. OH, NO, YOUR HONOR. LET ME -- LET
12 ME EXPLAIN, YOUR HONOR.

13 I HAD EITHER AN INVESTIGATOR OR AN ASSOCIATE FROM MY LAW
14 FIRM WHEN WE GOT THIS CASE IN CONTACT WHAT WE UNDERSTOOD TO BE
15 THREE SOURCES OF REFERRALS WHO THEY WERE CLAIMING THAT THEY
16 HAD GOT THAT THEY'RE ENTITLED TO GET COMMISSION ON.

17 THOSE THREE SOURCES OF REFERRALS ARE A CONTRACTUAL PRIVACY
18 WITH MY CLIENT. THEY HAVE AGREEMENTS WITH THEM THE SPECIFICS
19 I DON'T RECALL, BUT THEY'RE, LIKE, MARKETING AGREEMENTS
20 BECAUSE THEY'RE SENDING TRAFFIC TO MY CLIENT. PRESUMABLY THEY
21 HAVE THINGS LIKE INDEMNITIES AND THINGS OF THAT NATURE.

22 I -- WE WERE PREPARING FOR A MEDIATION. AND THE FOLKS
23 FROM MY OFFICE WENT AND CONTACTED THEM TO GET THEIR VIEWS ON
24 WHETHER OR NOT THERE WAS A PREEXISTING RELATIONSHIP WITH MY
25 CLIENTS SO WE COULD PREPARE FOR THE MEDIATION 'CAUSE

1 PRESUMABLY IF THERE WAS, THAT WOULD BE EVIDENCE THAT THERE
2 OUGHT NOT BE REFERRAL COMMISSIONS.

3 MY UNDERSTANDING OF THE DECLARATIONS THAT WE GOT IN
4 PREPARATION FOR OUR JAMS MEDIATION WAS IT WAS BASED UPON
5 FACTUAL INFORMATION THAT MY CLIENT HAD -- AND THAT THEY HAD IN
6 THEIR OFFICES AS TO WHETHER OR NOT THERE WAS A HISTORIC LEGACY
7 RELATIONSHIP AND WHETHER OR NOT THERE WERE HISTORICAL PAYMENTS
8 AND WHETHER OR NOT THERE WAS HISTORICAL TRAFFIC. AND I DO
9 BELIEVE THAT WE PRESENTED THAT AT THE MEDIATION.

10 I WASN'T THERE. AN ASSOCIATE FROM MY OFFICE WAS THERE.
11 AND IN TERMS OF THIS THING REGARDING LAVISHING AND ALL THAT,
12 THIS WAS DONE WHOLLY SEPARATE OR INDEPENDENT -- I HAVE NO IDEA
13 WHERE ON ANY TIME LINE THESE THINGS OCCURRED THAT THEY ARE
14 PUSHING TOGETHER.

15 I KNOW THAT WE GOT THE CASE IN, WE KNEW ABOUT THE
16 CONTRACTUAL PRIVACY, AND THEN WE ACTED DILIGENTLY TO GET THE
17 INFORMATION THAT WE NEEDED SO THAT WE COULD UNDERSTAND IF
18 THERE WAS A PREEXISTING RELATIONSHIP.

19 FRANKLY, ANYTHING ELSE BESIDES DETERMINING WHETHER THERE
20 WAS A PREEXISTING RELATIONSHIP PROBABLY WOULDN'T BE RELEVANT.
21 SO TO THE EXTENT THAT THESE THINGS ARE IN THERE, WHICH I DON'T
22 THINK THEY ARE -- I DON'T THINK THAT SOMEONE FROM MY OFFICE
23 WOULD GET OPINIONS -- IT WOULDN'T BE RELEVANT.

24 AND THERE CERTAINLY WAS NO TAMPERING BECAUSE THE FOLKS
25 FROM MY OFFICE ACTED WHOLLY INDEPENDENT OF ANY KNOWLEDGE OF

1 ANYTHING THAT WAS GOING ON IN CONFERENCES. SO THAT'S --
2 THAT'S THE MOST HONEST WAY THAT I COULD ARTICULATE IT. SO THE
3 WHOLE THING TO US SOUNDS CONCOCTED.

4 I DO BELIEVE THAT WE ONLY REALLY GOT ONE DECLARATION
5 AND -- AND WE'LL GO BACK AND TAKE A LOOK AT IT.

6 **MS. SANDERSON:** YOUR HONOR, CAN I MAKE ONE POINT,
7 WHICH IS THAT I DO WANT TO BE CLEAR THAT ALLEGATIONS IN THIS
8 COMPLAINT ARE AS TO DEFENDANTS AND WE HAVE NEVER MADE ANY
9 ALLEGATION OF IMPROPER CONDUCT OF COUNSEL. I JUST WANT TO BE
10 ON THE LEVEL ABOUT THAT.

11 **THE COURT:** SO ARE WE TALKING ABOUT TWO SEPARATE ACTS
12 HERE OR THE SAME ACT, BECAUSE YOU REFERENCED AN INDICATION OF
13 INFORMATION COMING FROM COUNSEL. COUNSEL HAS JUST ADVISED THE
14 COURT THAT THE ONLY INFORMATION THEY HAVE IS THEIR INDEPENDENT
15 INVESTIGATION.

16 **MS. SANDERSON:** AND A -- A DECLARATION. IT'S THE
17 TESTIMONY THAT SERVES AS THE BASIS FOR THIS. AND WHAT I AM
18 CLARIFYING IS THAT WE ARE ARGUING THAT THE -- OR ALLEGING THAT
19 THE DEFENDANTS ARE THE ONES WHO LAVISHED THE GIFTS AND
20 OBTAINED THAT TESTIMONY THROUGH IMPROPER MEANS. AND I JUST
21 WANT TO BE CLEAR FOR THE RECORD WE HAVE NOT MADE ANY
22 ALLEGATION AS TO COUNSEL THAT WAY.

23 **THE COURT:** DO YOU HAVE ANY INFORMATION AS TO WHO --
24 WHICH SPECIFIC DEFENDANT APPARENTLY OR ALLEGEDLY OBTAINED THE
25 DECLARATION, IF IT'S NOT THE LAWYERS?

1 **MS. SANDERSON:** IT'S NOT THE OBTAINING OF THE
2 DECLARATION. IT'S THE INFLUENCE AND SOLICITING OF THE
3 TESTIMONY THAT COULD THEN BE LATER RECORDED IN THE
4 DECLARATION.

5 AT THIS POINT, WE'RE INFORMED AND BELIEVE THAT ARDESHIR
6 AKHAVAN WAS INVOLVED. BUT, AGAIN, BECAUSE WE BELIEVE THAT
7 DEFENDANTS ACT IN CONCERT WITH ONE ANOTHER ON THESE THINGS,
8 THIS IS ONE OF THE ISSUES THAT WE NEED TO INVESTIGATE THROUGH
9 DISCOVERY. ON THIS MOTION TO DISMISS, THOUGH, WE BELIEVE THAT
10 WE HAVE STATED AND WITH GOOD RULE 11 BASIS A CLAIM FOR THIS
11 PREDICATE ACT.

12 **THE COURT:** YOU WANT TO ADDRESS THE FACT OF HOW YOU
13 CAN STATE A LANHAM ACT CASE GIVEN THE FACTUAL CIRCUMSTANCES
14 THAT HAVE BEEN ALLEGED?

15 **MS. SANDERSON:** YES. THE LANHAM ACT CASE IS BASED ON
16 THE -- THE CLAIM IS BASED ON THE SUPREME COURT'S RECENT
17 HOLDING IN THE *LEXMARK V. STATIC CONTROL*.

18 **THE COURT:** I NEED FACTS. I UNDERSTAND THE LAW, AND
19 I KNOW THE LAW.

20 **MS. SANDERSON:** COUNSEL HAS REPRESENTED THAT THIS
21 CANNOT BE A PROPER LANHAM ACT CLAIM BECAUSE IT DOESN'T INVOLVE
22 REPRESENTATIONS MADE TO THE CONSUMING PUBLIC. HERE, THERE ARE
23 REPRESENTATIONS MADE TO PLAINTIFF'S CLIENTS, THE PEOPLE THAT
24 HE NEEDS TO REFER IN ORDER TO MAKE MONEY FOR HIS BUSINESS.

25 AND SO OUR ARGUMENT IS THAT THEY ARE CONSUMERS UNDER THE

1 LANHAM ACT FOR PURPOSES OF HIS BUSINESS. AND, THEREFORE, IT'S
2 A PROPER LANHAM ACT CLAIM, TO ADDRESS COUNSEL'S ARGUMENTS
3 SPECIFICALLY.

4 **THE COURT:** ANYTHING ELSE?

5 **MS. SANDERSON:** NO, YOUR HONOR.

6 **THE COURT:** YOU HAVE THROWN ALL OF THESE DEFENDANTS
7 IN TOGETHER. THERE HAS BEEN NO REAL ARTICULATION OF WHAT ANY
8 PARTICULAR DEFENDANT HAS DONE OR IS DOING.

9 DO YOU HAVE ANY OTHER FACTS OTHER THAN TO THROW THEM ALL
10 IN TOGETHER?

11 **MS. SANDERSON:** YOUR HONOR, WE HAVE TRIED TO -- WE'RE
12 AWARE OF NUMEROUS OTHER CORPORATIONS THAT ARE RELATED TO
13 DEFENDANTS.

14 **THE COURT:** WHAT IS THE THEORY -- IS YOUR THEORY?
15 WHAT IS THE THEORY OF DEALING WITH ALL OF THESE VARIOUS
16 INDEPENDENT ENTITIES?

17 **MS. SANDERSON:** EACH OF THESE ENTITIES IS TIED
18 DIRECTLY TO THE CONDUCT RELATED TO PLAINTIFF.

19 **THE COURT:** WHAT IS THE LEGAL THEORY UPON WHICH YOU
20 ARE ABLE TO, FROM A LEGAL PERSPECTIVE, HAVE THE ACTS OF ONE
21 IMPUTED TO THE OTHER?

22 **MS. SANDERSON:** THE ASSOCIATION-IN-FACT ENTERPRISE
23 FOR PURPOSES OF THE RICO CLAIMS. FOR THE OTHERS, UNDER AN
24 AGENCY OR ALTER EGO THEORY.

25 **THE COURT:** BUT YOU HAVEN'T ALLEGED CERTAINLY ALTER

1 EGO. YOU HAVEN'T ALLEGED FACTS TO SUPPORT ALTER EGO.

2 **MS. SANDERSON:** I WILL IT ADMIT, YOUR HONOR, THAT THE
3 COMPLAINT DOES NOT SPECIFICALLY GO THROUGH THE ALTER EGO
4 ALLEGATIONS. HOWEVER, WE FEEL THE ALLEGATIONS SUPPORTING THE
5 ASSOCIATION-IN-FACT ENTERPRISE SHOW THAT THESE PEOPLE AND
6 COMPANIES ARE ACTING INTERCHANGEABLY AND AS ONE.

7 **THE COURT:** SO WHAT IS HARKLET ENTERPRISE ITSELF
8 DOING?

9 **MS. SANDERSON:** ALL IT DOES IS A HOLD A WEBSITE THAT
10 FEEDS BACK INTO THIS CONDUCT, AND IT'S SPECIFIC HERE BECAUSE
11 DEFENDANT WAS REQUIRED TO GO AND -- OR PLAINTIFF WAS REQUIRED
12 TO GO AND REGISTER ON THAT WEBSITE AS PART OF HIS PERFORMANCE
13 UNDER THE CONTRACT.

14 AND, AGAIN, HE LOOKS AT ONE WEBSITE -- WE'VE HEARD THIS
15 ADMITTED HERE TODAY. ONE WEBSITE, IT'S HARKLET. ANOTHER ONE,
16 IT'S NAUTELL. ANOTHER ONE, WE DON'T EVEN KNOW THE CORPORATE
17 NAME OF IT.

18 THE --

19 **THE COURT:** LOOK, YOU SHOULD UNDERSTAND THIS MUCH
20 BETTER THAN I DO. I'M ASKING YOU THE QUESTIONS AS THE
21 PLAINTIFF. SO THE POINT WITH RESPECT TO HARKLET, AS I'M
22 UNDERSTANDING, IS THAT IT WAS PASSIVE BUT IT WAS REQUIRED THAT
23 THE PLAINTIFF USE THAT WEBSITE TO REGISTER.

24 IS THAT WHAT YOU'RE SAYING?

25 **MS. SANDERSON:** YES. BUT OUR ARGUMENT IS NOT THAT

1 HARKLET IS PASSIVE. IT'S THAT IT'S PART -- PART -- IT'S NOT
2 THE ENTERPRISE. WE'RE DOING AN ASSOCIATION-IN-FACT ENTERPRISE
3 THEORY, NOT THE CORPORATE ENTERPRISE THEORY. AND SO HARKLET'S
4 PURPOSE IS TO MAKE SURE THAT PEOPLE WHO GO TO THIS WEBSITE
5 DON'T KNOW ABOUT THE OTHER WEBSITES TO MAKE SURE THAT THIS
6 MONEY GOES THIS WAY AND NOT THIS WAY.

7 AND HARKLET IS A -- A CYPRESS CORPORATION, WHICH IS FINE.
8 YOU CAN REGISTER CORPORATIONS IN CYPRESS, BUT IT HELPS TO
9 CONFUSE THE FACT AS TO DO THEY HAVE A CENTRAL LOCATION, ARE
10 THEY OPERATING CENTRALLY? AND IT IS, THEREFORE, AN ACTIVE
11 PARTICIPANT IN THE FRAUD THAT WAS COMMITTED UPON PLAINTIFF AND
12 IS BEING COMMITTED UPON OTHERS.

13 **THE COURT:** ALL RIGHT. WHAT ABOUT NUNATON?

14 **MS. SANDERSON:** SAME, A WEBSITE THAT PLAINTIFF WAS
15 REQUIRED TO REGISTER ON.

16 **THE COURT:** INTERNET LIVE?

17 **MS. SANDERSON:** INTERNET LIVE, INTERNET BRAND, AND
18 INTERNET BUSINESS SERVICES ARE HOLDING COMPANIES. WE BELIEVE
19 THAT THEY ALSO -- ONE OF THEM PAYS THE BILLS ON THE OFFICE,
20 OUT OF WHICH ALL OF THESE BUSINESSES ARE OPERATED IN
21 CALABASAS, CALIFORNIA.

22 **THE COURT:** WHAT'S THE DIFFERENCE BETWEEN THEM, IF
23 ANY, IN TERMS OF THEIR ACTIONS?

24 **MS. SANDERSON:** WE THINK THAT THEY'RE RUN AS ONE IN
25 THE SAME. AND, AGAIN, YOUR HONOR, I -- I CAN'T GO INTO THE

1 DETAILS OF MS. LUHAR, BUT WE'RE NOT HERE TO HAVE DEFENDANTS
2 THAT DON'T BELONG. WE HAVE ALLEGED IT BASED ON THE FACTS THAT
3 ARE AVAILABLE TO US THROUGH OUR INVESTIGATION. IT WASN'T
4 JUST, YOU KNOW, THROWING DARTS AT A BOARD.

5 THERE ARE NUMEROUS COMPANIES THAT ARE RELATED TO
6 DEFENDANTS. WE HAVEN'T INCLUDED THEM. THEY DON'T HAVE A
7 DIRECT TIE TO PLAINTIFF. AND IF DISCOVERY SHOWS THAT OTHERS
8 DO NOT BELONG IN HERE, WE WILL GET RID OF THEM, BUT WE'VE
9 MADE --

10 **THE COURT:** SO WHAT WAS THE PLAINTIFF'S, THEN,
11 INTERACTION WITH INTERNET LIVE?

12 **MS. SANDERSON:** PLAINTIFF WAS REQUIRED TO GO TO AN
13 IN-PERSON MEETING AT THE OFFICE IN CALABASAS THAT WE BELIEVE
14 BASED ON JOB LISTINGS, BASED ON EVERYTHING, IS KIND OF A
15 HOLDING COMPANY FOR THESE OTHER BUSINESSES.

16 BUT UNTIL WE GET INTO DISCOVERY, WE CANNOT GIVE FURTHER
17 DETAIL IN THAT. WE HAVE ENOUGH INFORMATION, THOUGH, TO MEET
18 OUR PLEADING REQUIREMENTS.

19 **THE COURT:** WHAT IS THE CONNECTION OF THE PLAINTIFF
20 TO INTERNET BRAND?

21 **MS. SANDERSON:** AGAIN, WE BELIEVE THAT INTERNET LIVE
22 AND INTERNET BRAND ARE RUN SIMULTANEOUSLY.

23 **THE COURT:** SO THERE'S NO SPECIFIC -- SO -- YOU'VE
24 ARTICULATED SOMETHING WITH RESPECT TO INTERNET LIVE, BUT YOU
25 DON'T HAVE ANYTHING ELSE TO ARTICULATE WITH RESPECT TO

1 INTERNET BRAND. YOU'RE JUST BRINGING IT IN BECAUSE YOU THINK
2 INTERNET LIVE RUNS IT?

3 **MS. SANDERSON:** BASED ON OUR INVESTIGATION, BOTH
4 INTERNET BRAND AND INTERNET LIVE ARE RUNNING THE SHOW AND --
5 IT SEEMS TO BE JUST -- FROM MY PERSPECTIVE, I DON'T KNOW, I
6 HAVE NOT DONE DISCOVERY -- BUT LOOKING AT THE INFORMATION
7 THAT'S PUBLICLY AVAILABLE, IT SEEMS TO BE A GUESS AS TO WHICH
8 ONE -- WHICH ENTITY DEFENDANTS USE TO DO THIS OR TO DO THAT,
9 TO POST JOB LISTINGS, TO LIST THEMSELVES IN THIS DIRECTORY.

10 THERE DOESN'T SEEM TO BE ANY RHYME OR REASON OTHER THAN
11 THAT THEY'RE BOTH INVOLVED.

12 **THE COURT:** AND PLAINTIFF WAS REQUIRED TO GO THERE BY
13 WHOM?

14 **MS. SANDERSON:** MR. AKHAVAN ASKED HIM TO MEET THEM
15 THERE.

16 **THE COURT:** AT THE OFFICES OF INTERNET LIVE OR
17 INTERNET BRAND?

18 **MS. SANDERSON:** WELL, HE SAID THEY WERE THE OFFICES
19 OF CECASH. THIS BRINGS US BACK TO THE PROBLEM.

20 **THE COURT:** SO HOW DID YOU BECOME AWARE OF INTERNET
21 LIVE AND INTERNET BRAND?

22 **MS. SANDERSON:** WE WERE AWARE OF THEM THROUGH JUST
23 GOOD OLD-FASHIONED INTERNET RESEARCH AND INVESTIGATION, BUT
24 THEN WITH THEIR FIRST MOTION TO -- OR MOTION TO SQUASH SERVICE
25 OF THE COMPLAINT, MR. MIZRACHI -- AND I HOPE I'M PRONOUNCING

1 THAT RIGHT -- FILED A DECLARATION THAT ESSENTIALLY CONFIRMED
2 THAT THOSE WERE THE BUSINESSES DOING BUSINESS AT THAT
3 LOCATION.

4 **THE COURT:** AND INTERNET BUSINESS SERVICES?

5 **MS. SANDERSON:** YES. SAME THING, ALTHOUGH
6 PLAINTIFF -- OR DEFENDANTS' COUNSEL HAS REPRESENTED TO US THAT
7 AT THIS POINT, THAT HAVE MIGHT BE A DBA.

8 THERE IS A CORPORATE HISTORY WITH THE STATE OF CALIFORNIA,
9 AND THEY HAVE APPEARED SEPARATELY IN THE CASE.

10 **THE COURT:** WHAT IS THE PLAINTIFF'S INTERACTION WITH
11 NAUTELL CAPITAL?

12 **MS. SANDERSON:** AGAIN, THE HOLDER OF A WEBSITE.

13 **THE COURT:** WHAT IS THE WEBSITE?

14 **MS. SANDERSON:** IT IS CITYSEX.COM.

15 **THE COURT:** I THOUGHT -- OKAY. MAYBE I'M SAYING THEM
16 WRONG. I THOUGHT NUNATON COMPANY WAS CITYSEX?

17 **MS. SANDERSON:** NUNATON IS CASHTRAFFIC.COM.

18 **THE COURT:** DID THE PLAINTIFF REGISTER THERE AS WELL?

19 **MS. SANDERSON:** YES.

20 **THE COURT:** AND -- AND WHAT DOES IT MEAN FOR THE
21 PLAINTIFF TO REGISTER?

22 **MS. SANDERSON:** THESE WEBSITES ARE AFFILIATE
23 WEBSITES. THEY ASK AFFILIATE ADVERTISERS TO GO AND REGISTER
24 ON THE WEBSITE TO START PROMOTING THE WEBSITE. AND I
25 BELIEVE -- I HAVE NOT REGISTERED MYSELF -- THAT IT THEN GIVES

1 THEM ACCESS TO CERTAIN TRACKING PLATFORMS.

2 PLAINTIFF WAS NOT ACTING AS AN AFFILIATE. HE WAS JUST A
3 BROKER BUT WAS ASKED TO GO REGISTER ON THESE WEBSITES SO HE
4 COULD HAVE ACCESS TO THE TRACKING PLATFORMS OR SPREADSHEETS,
5 DATABASE, HOWEVER YOU WANT TO LOOK AT IT.

6 THAT WOULD LET HIM MONITOR THE TRAFFIC THAT HIS REFERRALS
7 WERE SENDING OVER TO DEFENDANTS. IT'S -- IT'S AN AUDITING
8 CONTROL IN A WAY.

9 **THE COURT:** CASH TRAFFIC LIMITED, WHICH MAY BE
10 DEFUNCT, WHAT'S HIS INTERACTION WITH THAT COMPANY?

11 **MS. SANDERSON:** I BELIEVE THAT CASH TRAFFIC WEBSITE,
12 CASHTRAFFIC.COM, THE TERMS LIST NUNATON AS THE OWNER, BUT
13 OTHER INDICATIONS ON THE WEBSITE INDICATE IT'S OWNED AND
14 OPERATED BY AN ENTITY CALLED CASH TRAFFIC LTE.

15 **THE COURT:** ALACRE TRADING?

16 **MS. SANDERSON:** THAT IS THE IBALLERS WEBSITE.

17 **THE COURT:** YOU SAID "IBALLERS" AS IN --

18 **MS. SANDERSON:** YES, "I" AS IN, LIKE, IPOD.
19 IBALLERS.

20 **THE COURT:** AND HE REGISTERED THERE AS WELL?

21 **MS. SANDERSON:** YES.

22 **THE COURT:** AND IN EACH OF THE PLACES WHERE HE
23 REGISTERED, IS THAT WHERE THE TERMS AND CONDITIONS OF THE
24 ALLEGED AGREEMENTS OCCURRED?

25 **MS. SANDERSON:** CORRECT, ALLEGEDLY.

1 **THE COURT:** ARE THEY ALL THE SAME?

2 **MS. SANDERSON:** NO. AND THAT'S -- THAT'S PART OF --
3 THAT'S PART OF OUR -- OUR ISSUE ON THE ARBITRATION ISSUE IS
4 THAT THESE AGREEMENTS ARE ONLY ONE DEFENDANT AT A TIME AND
5 THEY ACTUALLY CONFLICT WITH EACH OTHER IN MANY RESPECTS.

6 **THE COURT:** AND WITH RESPECT TO THE BREACH OF
7 CONTRACT, THEN, IT SOUNDS LIKE YOU HAVE MULTIPLE CAUSES OF
8 ACTIONS BECAUSE THERE ARE MULTIPLE CONTRACTS AND DIFFERENT
9 AMOUNTS DUE UNDER EACH OF THESE VARIOUS REGISTRATION SITES?

10 **MS. SANDERSON:** THAT'S -- THAT'S INCORRECT FROM
11 PLAINTIFF'S PERSPECTIVE.

12 WE'RE ALLEGING BREACH OF A SINGLE CONTRACT WHICH WAS THE
13 REFERRAL CONTRACT, THE CONTRACT FOR HIM TO MAKE REFERRALS OF
14 AFFILIATES. PLAINTIFF ONLY REGISTERED ON THESE WEBSITES IN
15 ORDER TO GAIN ACCESS TO THE TRACKING PLATFORMS. IT WAS THE --
16 A TECHNICAL REQUIREMENT, IF YOU WILL, AND HE NEVER SENT -- THE
17 TERMS ARE INAPPLICABLE TO HIM AND HIS RELATIONSHIP TO THE
18 DEFENDANTS.

19 **THE COURT:** AND VERDE MEDIA CORPORATION, IS IT --
20 WHAT KIND OF CORPORATION IS IT? HAS -- IS IT A PUBLIC
21 CORPORATION? A --

22 **MS. SANDERSON:** NO.

23 **THE COURT:** I DIDN'T THINK SO. SO WHAT KIND OF
24 CORPORATION IS IT?

25 **MS. SANDERSON:** IT'S A -- A NEVADA LIMITED LIABILITY

1 COMPANY.

2 **THE COURT:** SOLE PROPRIETOR? WHOLLY OWNED?

3 **MS. SANDERSON:** WHOLLY OWNED.

4 **THE COURT:** BY HOW MANY PEOPLE?

5 **MS. SANDERSON:** ONE.

6 **THE COURT:** WHAT'S THAT PERSON'S NAME.

7 **MS. SANDERSON:** JEREMY GREEN AND IT'S REFERENCED IN
8 THE COMPLAINT.

9 (PAUSE IN THE PROCEEDINGS.)

10 **THE COURT:** ALL RIGHT. WELL, I THINK I HAVE A BETTER
11 UNDERSTANDING.

12 ANYTHING ELSE YOU WANT TO SAY AT THIS JUNCTURE WHILE I
13 CHECK MY NOTES?

14 **MS. SANDERSON:** NO, YOUR HONOR.

15 **THE COURT:** MR. ROTHKEN?

16 **MR. ROTHKEN:** THANK YOU.

17 QUICKLY, YOUR HONOR, WE BELIEVE THIS IS A GARDEN-VARIETY
18 CONTRACT DISPUTE AT BEST, THAT THE PARTIES WHO COULD
19 POTENTIALLY BE INVOLVED ARE NOT EVEN HERE, THAT THE AFFILIATE
20 PROGRAM BOILER PLATE TERMS OF USE ONLINE WOULD BE APPLICABLE
21 IN SOME REGARD. DOESN'T JUST APPLY -- IT APPLIES TO EVERY
22 SPECIES OF FOLKS WHO REGISTER AND ARE INVOLVED IN SENDING
23 TRAFFIC. IT'S NOT LIMITED TO ANY ONE PARTICULAR TYPE OF
24 AFFILIATE. AND WHEN YOU SIGN UP AND REGISTER FOR AN AFFILIATE
25 PROGRAM ON LINE, AS AN OFFER OF PROOF, YOU GET A CODE. AND

1 THAT CODE IS TIED TO HOW MUCH YOU GET, AND IT'S AN ENTIRE
2 PROCESS.

3 AND THOSE ALL CONTAIN ARBITRATION CLAUSES, AND I'LL REMIND
4 THE COURT THAT NUMEROUS TIMES DURING THIS PROCESS, WE OFFERED
5 TO ENTER INTO A STIPULATION TO CONSOLIDATE THIS INTO AN
6 ARBITRATION, THAT WE WEREN'T GOING TO HAVE A SCENARIO WHERE
7 SOMEONE HAD TO GO TO CYPRESS OR EVEN LA. WE OFFERED, I THINK,
8 SAN FRANCISCO JAMS.

9 AND WE BELIEVE THAT -- FRANKLY, THAT THESE RICO CLAIMS ARE
10 CONCOCTED TO GET FEDERAL JURISDICTION WHERE NONE SHOULD SIT,
11 AND --

12 **THE COURT:** WELL, ON THAT -- I MEAN, LET'S SAY I --
13 ISN'T THERE DIVERSITY JURISDICTION HERE?

14 **MS. SANDERSON:** NO, YOUR HONOR.

15 **THE COURT:** IT'S A NEVADA -- THERE'S NOT?

16 **MS. SANDERSON:** I DON'T BELIEVE THAT THERE IS.
17 BECAUSE THE -- THE PLAINTIFF NEVADA CORPORATION AT ONE POINT
18 DURING THE EVENTS AT HAND WAS A CALIFORNIA CORPORATION.

19 **MR. ROTHKEN:** THEY -- THEY FOLDED THEIR -- THEIR
20 CORPORATION. CHANGED IT OVER THE YEARS SINCE THE RELATION
21 STARTED, SO IRONICALLY THE PLAINTIFF IS A NEW ENTITY.

22 **THE COURT:** I WAS WONDERING THAT BECAUSE AS I READ
23 THROUGH IT, I HAD A NEVADA CORPORATION ON ONE SIDE. EVERYBODY
24 ELSE ON THE OTHER SIDE WAS A CALIFORNIA CORPORATION. AND SO I
25 THOUGHT, WELL, WOULDN'T I HAVE JURISDICTION ANYWAY? SO THAT

1 ANSWERS MY QUESTION.

2 ALL RIGHT. ANYTHING ELSE?

3 **MR. ROTHKEN:** THANK YOU, YOUR HONOR.

4 **MS. SANDERSON:** NO, THANK YOU.

5 **THE COURT:** ALL RIGHT. SUBMITTED?

6 **MR. ROTHKEN:** SUBMITTED, YOUR HONOR. THANK YOU.

7 **THE COURT:** THANK YOU.

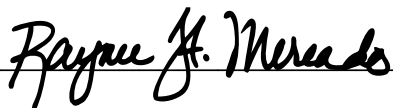
8 (PROCEEDINGS WERE CONCLUDED AT 3:12 P.M.)

9 --000--

10
11 **CERTIFICATE OF REPORTER**

12
13 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
14 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

15 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO,
16 NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS
17 HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR
18 OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

19
20 

21 RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

22 TUESDAY, MARCH 3, 2015

23
24
25
RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (510) 451-7530